that purchase the switching and transport UNEs; instead, reciprocal compensation payments due from BellSouth are offset by payments due to BellSouth for CLECs' use of UNEs to terminate traffic. Varner Aff. ¶ 192.

The Act's reciprocal compensation requirements apply only to local traffic. Local Interconnection Order, 11 FCC Rcd at 16013, ¶ 1034; Varner Aff. ¶ 193. When traffic other than local traffic is routed on the same facilities as local traffic, each company reports to the other a Percentage Local Usage ("PLU"), which is the factor applied to a carrier's intrastate minutes of traffic terminating on the other carrier's network. Varner Aff. ¶ 193. The PLU is used to determine the amount of local minutes to be billed to the other company. Id.

The jurisdictional nature of traffic is determined by the end-to-end nature of the call. See Memorandum Opinion and Order, Long Distance/USA, Inc. v. Bell Tel. Co. of Pennsylvania, 10 FCC Rcd 1634, 1637-38, ¶ 13 (1995) ("the end-to-end nature of the communications [is] more significant than the facilities used to complete [it] . . . [and] a single interstate communication . . . does not become two communications because it passes through intermediate switching facilities"). Accordingly, traffic carried to enhanced service providers ("ESPs"), such as Internet service providers, is not "local" traffic, and no compensation is due. See Varner Aff. ¶¶ 196-197. Although the Commission has yet to rule on this issue, various CLECs have filed complaints with state regulatory agencies in the BellSouth region. Id. ¶ 198. This contractual dispute over ESP traffic has no bearing on whether BellSouth has met the reciprocal compensation requirements of the 1996 Act, however.[33] BellSouth will comply with all binding regulatory decisions in this area, as it does in all others. Varner Aff. ¶ 198.

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[33] Both the Florida Public Service Commission and the North Carolina Utilities Commission have so held. See Order No. PSC-97-1459-FOF-TL, Consideration of BellSouth

14. Resale.

Section 271(c)(2)(B)(xiv) requires BellSouth to make its telecommunications services available for resale in accordance with the provisions of sections 251(c)(4) and 252(d)(3) of the Communications Act. These provisions, in turn, require BellSouth to provide its services at wholesale rates, with no unreasonable or discriminatory conditions or limitations. 47 U.S.C. §§ 251(c)(4), 252(d)(3); see also 47 C.F.R. § 51.603(b) (requiring equal quality, subject to the same conditions, and with the same provisioning time intervals).

BellSouth's approved agreements and SGAT provide CLECs wholesale rates for any services that BellSouth offers to its retail customers, with the exception of those excluded from resale requirements in accordance with the Commission's rules and the orders of the Louisiana PSC. See Varner Aff. ¶¶ 199-208; Milner Aff. ¶ 163 & Ex. WKM-4 (technical service descriptions); AT&T Agreement §§ 23-28; PrimeCo Agreement § XVI (MFN clause); Sprint Spectrum Agreement § XVII (same); MereTel Agreement § XVII (same); SGAT § XIV; Compliance Order at 14.

BellSouth's discount rate of 20.72 percent, see AT&T Agreement § 35; SGAT Attach. H, was established by the Louisiana PSC based upon cost studies provided by BellSouth and an outside consultant's application of the "avoidable" cost methodologies formerly recommended by this Commission. See Cochran Aff. ¶ 37 & Attach. VI (App. A, Tab 2); Varner Aff. ¶ 205. The PSC reaffirmed the consistency of this discount with the Act's requirements in its Compliance Order at 14. Although not legally relevant, it is worth noting that the Louisiana

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Telecommunications, Inc.'s Entry into InterLATA Services, Docket No. 960786-TL, at 151 (Fla. Pub. Serv. Comm'n, Nov. 19, 1997); Order Regarding Section 271 Requirements, Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Services, Docket No. P-55, Sub. 1022 at 101 (N.C. Utilities Comm'n, Jan. 14, 1998).

PSC's 20.72 percent wholesale discount falls well within the Commission's now-defunct proxy range. 47 C.F.R. § 51.611 (overruled).

Addressing a concern of this Commission, see South Carolina Order, 13 FCC Rcd at 657-63, ¶¶ 212-224, BellSouth's contract service arrangements are now available for resale in Louisiana at the wholesale discount, under the same terms and conditions offered to BellSouth end users. Varner Aff. ¶ 202. BellSouth has revised its SGAT accordingly, and will agree to similar contract language with interested CLECs. Id. ¶¶ 9-10. If a reseller assumes all of the terms and conditions of a CSA, termination charges will not apply upon transfer of the CSA to the reseller. Id. ¶ 202.

The CLEC is the customer of record for all retail services purchased from BellSouth. Id. ¶ 203. BellSouth will take orders from the CLEC, bill the CLEC, and expect payment from the CLEC. Id. The CLEC will be the contact for ordering activities and repair calls. Id. In addition to continuing to accept presubscribed interexchange carrier changes directly from interexchange carriers, BellSouth now accepts such changes from the CLEC as the customer of record. Id.

CLECs in Louisiana have taken advantage of BellSouth's resale offerings on a large scale, serving approximately 45,000 local access lines in Louisiana on this basis. Wright Aff. at Conf. Ex. C.

Performance data are available to confirm that BellSouth offers its resale services on a nondiscriminatory basis. See Stacy Performance Aff. Ex. WNS-3.

C. Performance Measurements

BellSouth has taken very seriously the Commission's request for "[c]lear and precise" measurements by which CLECs and regulators can confirm nondiscriminatory provisioning of network facilities and services. Michigan Order, 12 FCC Rcd at 20655-56, ¶ 209. Working with the Georgia PSC, other state commissions, and CLECs, BellSouth has developed a comprehensive set of Service Quality Measurements covering nine categories: access to OSSs for pre-ordering and ordering; ordering; provisioning; maintenance and repair; billing; operator services and directory assistance; E911; local interconnection trunk group blockage; and collocation. The Service Quality Measurements and associated reporting commitments have been incorporated into BellSouth's SGAT in Louisiana and adopted on an interim basis by the Louisiana PSC, which concluded that they included the "measurements and standards as suggested by the FCC; together with the measurements and standards suggested by the Department of Justice in connection with the Oklahoma 271 case." See July 1, 1998 Louisiana PSC Ex Parte Order, No. U-22252-B at 3. The measurements are fully described in Exhibit WNS-1 to the Performance Affidavit of William Stacy (App. A, Tab 23), and are summarized in the following table:

FIGURE 2: SERVICE QUALITY MEASUREMENTS

CATEGORY	MEASUREMENTS
Pre-Ordering and Ordering OSS	1. Average OSS Response Interval 2. OSS Interface Availability
Ordering	1. Percent Flow-through Service Requests 2. Percent Rejected Service Requests 3. Reject Interval 4. Firm Order Confirmation Timeliness 5. Speed of Answer in Ordering Center
Provisioning	1. Average Completion Interval 2. Order Completion Interval Distribution 3. Held Order Interval Distribution and Mean Interval 4. Percent Missed Installation Appointments 5. Percent Provisioning Troubles w/in 30 days 6. Coordinated Customer Conversions 7. Average Completion Notice Interval
Maintenance & Repair	1. OSS Interface Availability 2. Average OSS Response Interval 3. Average Answer Time – Repair 4. Missed Repair Appointments 5. Customer Trouble Report Rate 6. Maintenance Average Duration 7. Percent Repeat Troubles w/in 30 days 8. Out of Service >24 Hours
Billing	1. Invoice Accuracy 2. Invoice Timeliness 3. Usage Data Delivery Accuracy 4. Usage Data Delivery Timeliness and Completeness
Operator Services & Directory Assistance	1. Average Time to Answer 2. Percent Answered within "X" Seconds
E911	1. Timeliness 2. Accuracy
Trunk Group Performance	1. Comparative Trunk Group Service Summary 2. Trunk Group Service Report 3. Trunk Group Service Detail
Collocation	1. Average Response Time 2. Average Arrangement Time 3. Percentage of Due Dates Missed

BellSouth's Service Quality Measurements are substantially the same as, or more comprehensive than, the measurements suggested in this Commission's recent Notice of Proposed Rulemaking.[34] Stacy Performance Aff. ¶ 4 & Ex. WNS-2.

Wherever possible, the Service Quality Measurements compare BellSouth's level of service on behalf of CLECs to BellSouth's level of service in its own retail operations. Where no comparable retail functions exist, the level of service provided to CLECs is tested against Louisiana PSC–approved benchmarks. Varner Aff. ¶ 262-263.

BellSouth has established an Internet site that provides CLECs with performance measurement reports and associated data. See https://clec.BellSouth.com. At this site, CLECs can review BellSouth's Service Quality Measurements, including raw data. Id. The reports and data on this site are posted monthly; each month's new data overwrite the data of the previous month. Id. While aggregate data are available for any interested party to review, CLEC-specific data are password-protected and available only to an authorized party. This password requirement ensures the confidentiality of CLEC proprietary information.

The data that BellSouth has collected establishes that for interconnection trunking, provisioning of UNEs, and resale services, CLECs are receiving nondiscriminatory service. See generally Stacy Performance Aff. Ex. WNS-3.

III. BELLSOUTH SATISFIES THE REQUIREMENTS OF SECTION 272

BellSouth is submitting with this application extensive evidence demonstrating that BellSouth will comply with the requirements of section 272 when it receives interLATA

[34] Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection and Operator Services and Directory Assistance, CC Docket No. 98-56, 1998 WL 180809 (rel. Apr. 17, 1998).

authorization in Louisiana and, indeed, is currently operating in accordance with section 272's terms. More broadly, BellSouth has established structural separation and nondiscrimination safeguards that will ensure its long distance affiliate does not have any unfair advantage over competitors when it sells in-region, interLATA services.

Separate Affiliate Requirement of Section 272(a). BellSouth Corporation has established an affiliate — BellSouth Long Distance, Inc. ("BSLD") — that will provide in-region interLATA services in compliance with the structural separation and operational requirements of section 272. Cochran Aff. ¶¶ 7-8; Wentworth Aff. ¶¶ 5-7 (App. A, Tab 27).

Structural and Transactional Requirements of Section 272(b). Section 272(b)(1) provides that the required separate affiliate "shall operate independently from the Bell operating company." For as long as BSLD is subject to section 272, it will operate in a manner that satisfies both this statutory requirement and the Commission's implementing regulations. Cochran Aff. ¶¶ 9-21; Wentworth Aff. ¶ 10. BSLD and BellSouth Telecommunications, Inc. ("BST") do not jointly own telecommunications transmission or switching facilities or the land and buildings on which such facilities are located, and will not jointly own such facilities when subject to this restriction under section 272. Cochran Aff. ¶ 10. BST employees will not operate, install, or maintain BSLD's facilities, for as long as they are prohibited from doing so by section 272. Id. BSLD maintains separate books, records, and accounts from BST. Id. ¶ 12; Wentworth Aff. ¶ 11. BSLD has separate officers, directors, and employees from BST. 47 U.S.C. § 272(b)(3); Cochran Aff. ¶ 18; Wentworth Aff. ¶ 12. Creditors of BSLD do not and will not have recourse to the assets of BST. 47 U.S.C. § 272(b)(4); Cochran Aff. ¶ 20; Wentworth Aff. ¶ 14. BSLD conducts all transactions with BST on an arm's-length basis, and any such transactions are reduced to writing and available for public inspection. 47 U.S.C. § 272(b)(5);

Cochran Aff. ¶ 21; Wentworth Aff. ¶ 14. These transactions will be accounted for in accordance with all applicable Commission requirements. Cochran Aff. ¶ 13-17, 22.

BSLD has hired its employees from all segments of the industry and less than a third are former employees of a local telephone operating company. Nor is there any risk that former BST employees BSLD has hired will serve as improper conduits of confidential information between BST and BSLD. All BellSouth employees are bound by confidentiality requirements that constitute part of their employment obligations, and all BellSouth employees sign a document that expressly warns employees they may not improperly use proprietary information. Betz Aff. ¶ 17 (App. A, Tab 3). BSLD also conducts education sessions, attended by every employee, regarding the requirements of the Act. Wentworth Aff. ¶ 15.

Even before receiving in-region, interLATA authorization, BellSouth has disclosed significant information about BST and BSLD. This information satisfies the Commission's requirements and is sufficient to monitor BellSouth's compliance with the nondiscrimination and accounting safeguards of the Act. Wentworth Aff. ¶ 14. BellSouth has included with its application (and has posted on its Internet site) a summary description of previous transactions between BST and BSLD, and has posted on the Internet the entirety of the contracts under which BST and BSLD conduct their current transactions. Id. BellSouth accordingly exceeds the statute's and the Commission's requirements by disclosing all of the rates, terms, and conditions of the agreements that underlie current transactions. Because the Commission and competitors have access to the agreements (as well as the standard tariffs under which BSLD purchases telecommunications services from BST), they clearly are able to conduct the monitoring and assessment activities envisioned by the Accounting Safeguards Order. Id. ¶ 122. In all cases, the transactions have been carried out on an arms-length basis in accordance with the Commission's applicable affiliate transaction and cost-accounting rules. Id. ¶ 21-22.

Nondiscrimination Safeguards of Section 272(c). Section 272(c)(1) prohibits BST from discriminating between BSLD and other entities. Subject to the joint marketing authority granted by section 272(g), BST does and will make available to unaffiliated entities any goods, services, facilities, and information that BST provides or will provide to BSLD at the same rates, terms, and conditions. Varner Aff. ¶ 221. These may include exchange access, interconnection, interoffice testing, end-to-end testing of BSLD equipment, collocation, UNEs, resold services, access to OSSs, and administrative services. Id. ¶¶ 222-226. To the extent BST develops new services for or with BSLD, it will also cooperate with other entities on a nondiscriminatory basis to develop such services, so long as it is required to do so under section 272. Id. ¶ 226. BST does not and will not, for so long as the requirement applies, discriminate between BSLD and other entities with regard to dissemination of technical information and interconnection standards related to telephone exchange and exchange access services, or with regard to protection of confidential network or customer information. Id. ¶ 229. Nor will BST disclose any individually identifiable customer proprietary network information ("CPNI") to BSLD except to the extent that such disclosure is consistent with section 222 and Commission rules. Id. BST will continue to provide public notice regarding any network change that will affect a competing telecommunications carrier's performance or ability to provide service, or will affect BST's interoperability with other telecommunications carriers. Id. ¶ 230.

As required by section 272(c)(2), BST will account for all transactions between BSLD and BST in accordance with applicable Commission rules. See Cochran Aff. ¶ 22-31.

Audit Requirements of Section 272(d). Pursuant to section 272(d)(1), BST will obtain and pay for a biennial federal/state audit, commencing after section 272's requirements become applicable. See Id. ¶ 32. This audit will be consistent with the Commission's rules. Id. In accordance with section 272(d)(2), BST will require the independent auditor to provide this Commission and interested state commissions with access to working papers and supporting materials relating to this audit. Id. ¶ 35. And, as required by section 272(d)(3), BST and its affiliates, including BSLD and BellSouth Corporation, will provide the independent auditor, the Commission, and the state commission with access to financial records and accounts necessary to verify compliance with section 272 and the regulations promulgated thereunder, including the separate accounting requirements under section 272(b). Id. ¶ 34.

Fulfillment of Requests Pursuant to Section 272(e). Pursuant to section 272(e)(1), BST will fulfill any requests from unaffiliated entities for installation and maintenance of telephone exchange and exchange access services within a period no longer than the period in which it provides such services to BSLD. Varner Aff. ¶ 235. In addition, BellSouth will comply with applicable Commission monitoring and reporting requirements. Id. ¶ 238.

BST will comply with section 272(e)(2) by refusing to provide any facilities, services, or information concerning its provision of exchange access to BSLD unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions. Id. ¶ 241. In accordance with section 272(e)(3), BST will charge BSLD rates for telephone exchange service and exchange access that are no less than the amount BST would charge any unaffiliated interexchange carrier for such service. Id. ¶¶ 241-242. Where BST uses access for provision of its own services, BST will impute to itself the same amount it would charge an unaffiliated interexchange carrier. Id. ¶ 245. Finally, to the extent that BST is permitted to provide interLATA or intraLATA facilities or services to BSLD, BST will make such services or facilities available to all carriers at the same rates and on the same terms and conditions, in accordance with section 272(e)(4). Id. ¶¶ 246-247.

Joint Marketing Provisions of Section 272(g). Pursuant to 272(g)(1), BSLD will not market or sell BST's telephone exchange service unless BST permits BSLD's competitors to do so as well. Varner Aff. ¶ 249. However, BellSouth will appropriately engage in joint marketing during both inbound and outbound calls. See 47 U.S.C. § 272(g).

In its South Carolina Order, the Commission clarified the relationship between a BOC's joint marketing rights pursuant to section 272(g) and its equal access obligations under section 251(g). The Commission concluded that a BOC may market its long distance service during inbound calls as long as it also "offers to read, in random order, the names and, if requested, the telephone numbers of all available interexchange carriers." South Carolina Order, 13 FCC Rcd at 671, ¶ 239. When authorized to offer long distance service in Louisiana, BellSouth will use this same joint marketing approach for inbound telemarketing. Varner Aff. ¶ 251.

Compliance. BellSouth has developed a compliance plan to ensure satisfaction of its obligations under section 272. Examples of the non-discrimination aspects of the compliance program include an overview of section 272's requirements for all employees, intensive training for employees who deal specifically with CLECs, electronic briefings and personal letters sent to all employees stressing the importance of compliance with the Act's provisions, and an "Ethics Hotline," which may be used to report anonymously suspected violations of applicable requirements. Betz Aff. ¶¶ 2-17. These procedures, which are similar to procedures used to comply with judicial restrictions under the Modification of Final Judgment ("MFJ"), will ensure that the letter and spirit of section 272 and its implementing regulations are honored.

IV. BELLSOUTH'S ENTRY INTO THE INTERLATA SERVICES MARKET WILL PROMOTE COMPETITION AND FURTHER THE PUBLIC INTEREST

The final element of the Commission's section 271 analysis is a determination whether interLATA entry "is consistent with the public interest, convenience and necessity." 47 U.S.C. § 271(d)(3)(C). The remainder of this Brief demonstrates that BellSouth's provision of interLATA services in Louisiana easily meets this test.

The Louisiana PSC has held unanimously that "consumers in Louisiana, both local and long distance, would be well served by BellSouth's entry into the long distance market." Compliance Order at 14. This conclusion accords with Congress's expectation, in passing the 1996 Act, that "removing all court ordered barriers to competition — including the MFJ interLATA restriction — will benefit consumers by lowering prices and accelerating innovation." 142 Cong. Rec. S713 (daily ed. Feb. 1, 1996) (statement of Sen. Breaux). The U.S. Department of Justice agrees that in-region interLATA entry by Bell companies would promote long distance competition.[35] This Commission itself has affirmed that "BOC entry into the long distance market will further Congress' objectives of promoting competition and deregulation of telecommunications markets." Michigan Order, 12 FCC Rcd at 20741-42, ¶ 381. Chairman Kennard, for instance, has noted that excluding BOCs from in-region long distance denies

[35] Evaluation of the United States Department of Justice, Application of SBC Communications Inc. Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, at 3-4 (FCC filed May 16, 1997).

consumers "the benefit of a powerful entrant in long distance and the new products and packages the Bell company might offer."[36]

The damage done by continuing to exclude the Bell companies from in-region, interLATA services is staggering. As the attached affidavit of Professor Jerry Hausman of MIT details, delaying Bell company interLATA entry has cost U.S. residential consumers $7 billion per year, effectively imposing an annual tax of over $100 on each long distance customer. Hausman Aff. ¶¶ 5, 22-24 (App. A, Tab 5).

This public burden cannot be justified by a desire to promote local competition. The 1996 Act already opens local markets and any additional benefit from applying some higher standard would be much less than the costs of continuing to curtail interLATA competition. Id. ¶¶ 11, 22-24. As Professor Hausman explains, "[t]he consumer welfare gains from increased competition in long distance will more than outweigh the incremental gain from the last step to theoretical regulatory perfection" that some parties are urging this Commission to enforce as a prerequisite to interLATA relief. Id. ¶ 23.

In Louisiana, moreover, there is no offsetting benefit at all from delaying long distance competition because BellSouth's interLATA entry would increase local competition. The Louisiana PSC found that approving BellSouth's application would benefit "both local and long distance" consumers in Louisiana. Compliance Order at 14. Allowing BellSouth's entry would end the incentives of potential competitors to go slow in Louisiana, or to limit their local

[36] Remarks by William E. Kennard, Chairman, Federal Communications Commission, to Legg Mason "Telecom Investment Precursors" Workshop, Mar. 12, 1998 (as prepared for delivery), available at <http://www.fcc.gov/Speeches/Kennard/spwek808.html>.

offerings, in an effort to delay BellSouth's entry while pursuing more profitable markets elsewhere.

A. The Scope of the Public Interest Inquiry

While the public interest inquiry generally may provide the Commission with "broad discretion . . . to consider factors relevant to the achievement of the goals and objectives of" the legislation, Michigan Order, 12 FCC Rcd at 20744-45, ¶ 385, it is limited by Congress's specific determinations.[37] In the 1996 Act, Congress decided that it would open local markets by enacting a competitive checklist that sets forth concrete obligations in plain terms. The "checklist" was Congress's test of "what . . . competition would encompass," 141 Cong. Rec. S8009 (daily ed. June 8, 1995) (statement of Sen. Hollings), and Congress forbade the Commission from second-guessing its judgment or modifying its checklist "by rule or otherwise," 47 U.S.C. § 271(d)(4) (emphasis added); see also 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler) (noting adoption of checklist approach in place of "actual competition" test). As the Chairman of the Senate Commerce Committee reassured Senators, "[t]he FCC's public-interest review is constrained by the statute" because "the FCC is specifically prohibited from limiting or extending the terms used in the competitive checklist." Id. at 141 Cong. Rec. S7967 (daily ed. June 8, 1995) (statement of Sen. Pressler).

[37] See NAACP v. FPC, 425 U.S. 662, 669 (1976) ("the use of the words 'public interest' in a regulatory statute . . . take[s] meaning from the purposes of the regulatory legislation"); New York Central Sec. Corp. v. United States, 287 U.S. 12, 25 (1932) ("the term 'public interest' as thus used [in a statute] is not a concept without ascertainable criteria"); Business Roundtable v. SEC, 905 F.2d 406, 413 (D.C. Cir. 1990) ("broad 'public interest' mandates must be limited to 'the purposes Congress had in mind when it enacted [the] legislation'" (quoting NAACP v. FPC, 425 U.S. at 670).

Accordingly, the Commission may not use the public interest inquiry to add local competition criteria beyond those that Congress included in the checklist.

The Michigan Order nevertheless suggests that because Congress included both the competitive checklist and the public interest test in section 271, Congress must have viewed the competitive checklist as an inadequate mechanism to open local markets.[38] But in fact, Congress wanted the Commission to examine an essential element of Bell company interLATA entry not addressed by any other part of section 271: the competitive consequences of that entry, given the checklist and section 272's safeguards.[39] The theory of the Michigan Order is implausible on its face, for it assumes that Congress devoted countless hours to honing the smallest details of the checklist and forbade the Commission from altering them, see 47 U.S.C. § 271(d)(4), and yet wanted the Commission to use a different standard of open local markets as the dispositive test in considering BOC applications.[40]

For its part, DOJ previously has suggested that the possible benefits of faster development of local competition may outweigh the costs of delaying BOC interLATA entry, so that the Commission should adopt a section 271 standard that is more stringent than the competitive checklist drafted by Congress.[41] In reaching this conclusion, DOJ relied heavily on

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[38] See Michigan Order, 12 FCC Rcd at 20747, ¶ 389 (reasoning that, if "compliance with the checklist alone is sufficient to open a BOC's local telecommunications markets to competition," then "BOC entry into the in-region interLATA services market would always be consistent with the public interest requirement whenever a BOC has implemented the competitive checklist").

[39] See id. at 20746, ¶ 388 (discussing "congressional determination" that open local markets and regulatory safeguards will protect interLATA competition).

[40] See e.g., 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler) (describing extensive negotiations and work that went into developing the competitive checklist).

[41] DOJ South Carolina Evaluation at 49.

the opinions of an expert, Professor Marius Schwartz, who was simultaneously serving as a paid advocate of AT&T's interests.[42] Professor Schwartz, however, did not quantify the cost-benefit comparison upon which he based his assertion; nor did Professor Schwartz attempt to assess how much more open the local market could be made by applying some standard that adds requirements to the competitive checklist.[43] Instead, Professor Schwartz contended that "logic" dictates that his "preferred" standard for open local markets "will yield large benefits in advancing local competition at the expense of comparatively modest and short-lived costs in the long distance market." Schwartz Supp. Aff. ¶ 11. The "logic" of a consultant is an exceedingly slim basis for DOJ to urge ignoring the clear intent of Congress.

The point of the public interest test is to allow the Commission to examine the effect on competition of Bell company entry into the interLATA market. The principal focus of the inquiry must be the market where the effects of Bell company entry would directly be felt: the interLATA market. It cannot be the local market, for issues related solely to local competition are conclusively determined by compliance with the competitive checklist.

The Commission may as part of its public interest inquiry evaluate such matters as the current state of long distance competition and the degree to which the checklist, section 272, and other regulatory safeguards constrain anticompetitive conduct in the interLATA market. These

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[42] Dr. Schwartz has appeared on behalf of AT&T before Commission staff — apparently with the approval of DOJ. In his presentation for AT&T, Schwartz argued for restrictions on entry into AT&T's markets. Ex Parte Letter from Kristen C. Thatcher, AT&T, to William F. Caton, Docket No. IB 97-142 (Oct. 27, 1997) (App. D, Tab 11); Letter from Marius Schwartz to Magalie Roman Salas, CC Docket No. 97-231 (Jan. 19, 1998) (App. D, Tab 12) ("Schwartz Letter"). Dr. Schwartz has acknowledged that he filed affidavits for AT&T and DOJ in the same two-week period. Schwartz Letter, nn.4, 6.

[43] See Schwartz Supp. Aff. ¶ 9 (DOJ South Carolina Evaluation Ex. 2).

inquiries are familiar for the Commission. As long as a decade ago, for example, the Commission addressed the hotly contested issue of whether regulatory safeguards and market conditions were then sufficient to preclude the Bell companies from impeding competition in long distance. The Commission concluded that they were and thus agreed with the DOJ that the line-of-business restrictions in the MFJ should be lifted, notwithstanding that the Bell companies in 1987 had no obligations to competitors comparable to the checklist.[44]

The Commission also may consider individual circumstances that Congress could not have anticipated — such as the applicant's history of compliance or non-compliance with Commission rules. See Michigan Order, 12 FCC Rcd at 20749-50, ¶ 397. The Commission may not, however, use the public interest inquiry to substitute its own local competition plan for that established by Congress, or otherwise to rewrite express provisions of the 1996 Act. See Iowa Utils. Bd. v. FCC, 135 F.3d 535 (8th Cir.1998) (petition for cert. pending, No. 97-1519 (filed Mar. 13, 1998)).

[44] Responsive Comments of the Federal Communications Commission As Amicus Curiae on the Report and Recommendations of the United States Concerning the Line of Business Restrictions Imposed on the Bell Companies by the Modification of Final Judgment, at 58, United States v. Western Electric Co., No. 82-0192 (D.D.C. filed Apr. 27, 1987) (App. D, Tab 3).

B. The Current Long Distance Oligopoly Limits Competition

Turning to the core of the Commission's proper inquiry, it has long been settled that the benefits of new entry in long distance presumptively outweigh any risk of harm,[45] even where the long distance entrant is an incumbent local exchange carrier.[46] That presumption is especially apt when applied to this application. Indeed, MCI's announced merger with WorldCom, which effectively eliminates the only nationwide, facilities-based entrant into the interLATA markets to appear since the breakup of the Bell System, makes the need for BellSouth to enter and energize the interLATA market in Louisiana more acute than ever.

The interexchange market is highly concentrated and systematically non-competitive. In the Michigan Order, the Commission repeated its "concern[s] . . . that not all segments of this market appear to be subject to vigorous competition," and "about the relative lack of competition among carriers to serve low volume long distance customers." 12 FCC Rcd at 20552-53, ¶ 16. Likewise, in Louisiana, the PSC "has instituted its own investigation into whether long distance companies currently operating in Louisiana have properly passed access charge reductions on to

[45] See Report and Order, Inquiry Into Policies To Be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service off the Island of Puerto Rico, 2 FCC Rcd 6600, 6604, ¶ 30 (1987) ("plac[ing] a burden on any entity opposing entry by a new carrier into interstate, interexchange markets to demonstrate by clear and convincing evidence that [additional] competition would not benefit the public"); Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, MTS-WATS Market Structure Inquiry, 81 F.C.C.2d 177, 201-02, ¶ 103 (1980) (Commission will "refrain from requiring new entrants to demonstrate beneficial effects of competition in the absence of a showing that competition will produce detrimental effects").

[46] See Report and Order, Inquiry Into Policies To Be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service off the Island of Puerto Rico, 2 FCC Rcd at 6604, ¶ 30 (Commission's "open entry policy" "clearly contemplate[s] competitive entry by independent local exchange companies") (citing MTS-WATS Market Structure Inquiry, 81 F.C.C.2d at 186).

their ratepayers," based on "serious questions raised at both the national level and within Louisiana regarding abuse in the long distance market." Compliance Order at 14.

It is clear that long distance carriers have failed to pass cost savings on to their customers. Access charges, which amount to almost half of interexchange carriers' total costs, declined by 35 percent from 1991 to 1998. Schmalensee Aff. ¶ 11 (App. A, Tab 18); see Hausman Aff. ¶ 49. Yet AT&T (followed by the other long distance carriers) raised its basic rates by 24 percent during this period. Schmalensee Aff. ¶ 9. Indeed, interexchange carriers have raised residential prices despite additional savings from new transmission technologies and lower equipment prices. Id. See also Hausman Aff. ¶ 49. The major carriers have, moreover, raised their discounted rates along with the basic rates from which discounts are taken. See Schmalensee Aff. ¶¶ 15, 26 (discounted rates yield "supracompetitive profits").[47] The monthly consumer price index for interstate toll calls rose steadily during 1995 and 1996, with only minor declines in early 1997. See WEFA Study at 9-10 and Figure 3 (App. C, Tab 23).

Flat-rate promotions do not mark a substantial departure from the long-standing pattern of lock-step price increases. Schmalensee Aff. ¶¶ 21-22. AT&T's flat rate of 15 cents per minute — higher than its standard evening rate — does not benefit typical residential callers who place most calls during off-peak hours. Id. ¶ 22. MCI's flat rate of 12 cents and Sprint's two-tiered plan of a 25 cent peak rate and 10 cent off-peak rate also provide modest relief at best. As Professor Schmalensee points out, "the primary reason that some customers might find the one rate plans attractive today is that AT&T has substantially raised its basic rates over the last several years." Id.

[47] See AT&T Calls MCI Flat Pricing More Than a Coincidence, Newsbytes, Sept. 30, 1996.

Likewise, AT&T's plan offering a flat rate of 10 cents per minute after paying a monthly fee of $4.95 is unattractive for lower-volume customers for whom the monthly fee amounts to a substantial percentage of total charges. Id. ¶ 23. (AT&T also has begun charging all residential customers a 93-cent monthly fee, which disproportionately burdens low-volume callers.[48])

Flat-rate and discount plans are not used by most residential callers. In 1997 and early 1998, 67 percent of AT&T's Louisiana residential customers faced full basic rates, either because their toll calling volume was insufficient to generate a discount under a calling plan, or because they did not belong to a calling plan. Schmalensee Aff. ¶ 12.[49] Moreover, the major carriers' calling plans have themselves become vehicles for price increases. AT&T's price "simplification" plan, announced in November 1997,[50] added three hours daily to the highest rate category and virtually eliminated the sharp drop in rates after 11:00 p.m.[51] AT&T also has announced a crackdown on its 20 million "occasional callers" — those callers who make fewer

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[48] AT&T Bills to Show 93-Cent Internet Fee, N.Y. Times, June 19, 1998, at D17. In reaction to the fee, FCC Chief of Staff John Nakahata stated that "[t]his is not a federal charge. This is a charge that AT&T is creating on its own." Id. MCI and Sprint began collecting similar fees earlier this year. Id.

[49] See also Pradnya Joshi, The Big Savings Maze, Newsday, Jan. 11, 1998, at F8 (60-63 percent of long distance customers pay basic rates); Reply Affidavit of Paul W. MacAvoy on Behalf of Ameritech Michigan ¶ 11, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services In Michigan, CC Docket No. 97-137 (FCC filed July 7, 1997) ("47 percent (or approximately 30 million) of AT&T's customers have average monthly bills of less than $10 and thus are not eligible for a discount plan.").

[50] See AT&T Abandons Distance Charges, Joins MCI and Sprint in Using Per-Min. Rates, Communications Daily, Nov. 5, 1997, at 3.

[51] Id.

than three long distance calls per month — by forcing these customers into a pricing plan that will increase their rates.[52]

AT&T and MCI actively seek to deny discounts not only to low-volume customers, but also to high-volume customers who are not price sensitive. As Professor Schmalensee points out, "[t]he combination of rising basic rates and optional calling plans, which the long distance carriers change over time, effectively exploits many customers' lack of information and inertia. With their pricing, the interexchange carriers segment the market, and separate the active 'bargain-hunters' from the 'victims.'" Schmalensee Aff. ¶ 22. For example, when LCI announced that it was moving to one-second billing,[53] AT&T responded in trade publications that it would offer similar service when requested but would not advertise the program.[54] By keeping its offering a secret, AT&T is able to retain per-minute billing for the vast majority of its customers.[55] In that regard, it should be noted that the incumbent LEC, SNET, has offered standard per-second billing in Connecticut for more than a year and a half.[56]

To the extent there have been price reductions, they consist simply of passing on only a portion of the interexchange carriers' savings from recent access charge reductions, and were

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[52] See Now on 'Offensive': AT&T's Armstrong Announces Job Cuts, Says Senior Management 'Owns Strategy', Communications Daily, Jan. 27, 1998, at 2.

[53] Communications Daily, Dec. 5, 1997, at 6. For the average 4.5 minute long distance call, not billing for the additional 30 seconds reduces the charge by 10 percent.

[54] Long Distance Carriers Move Toward Per-Sec. Billing Amid Competition, Communications Daily, Dec. 4, 1997, at 2.

[55] Id.

[56] LCI Press Release, LCI International First to Offer Consumers Long-Distance Charges by the Second, Dec. 3, 1997 (citing a study by telecommunications consulting firm TeleChoice) http://www.lci.com/media relations/1997/12/03.html; see also Hausman Aff. ¶ 18.

effected only because the Commission required AT&T to share some of its windfall with residential consumers who pay undiscounted basic rates. See Schmalensee Aff. ¶ 22; see also Hausman Aff. ¶ 49. Indeed, the FCC Chairman has expressed skepticism about claims by the Big Three that they have passed on to consumers reductions in access charges: "[AT&T, MCI, and Sprint] said that if we cut access charges, then they would cut long-distance bills. Have they done so? Well, they have yet to show me that consumers got the promised savings."[57] In a competitive industry, regulators do not need to strong-arm competitors into passing on cost-savings to consumers in this fashion.

Few observers are better positioned to explain today's interLATA market than Joseph Nacchio, a recent Executive Vice President of AT&T's Consumer and Small Business Division. In a speech to industry analysts during March 1998, Mr. Nacchio confessed that, "as former architect" of AT&T's pricing policies, "I know [the long distance industry is] oligopolistic." "Nobody really flows through access charge reductions," Mr. Nacchio was quoted as saying, for pricing has "no relation to cost."[58]

Even the major carriers have had to concede that they do not compete for the business of the lowest-volume callers. See Schmalensee Aff. ¶ 23. They have (dubiously) claimed in the

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[57] Remarks by William E. Kennard, Chairman, FCC, to U.S. Dep't of Commerce, "Connecting All Americans" Conference, Feb. 26, 1998 (as prepared for delivery) <http://www.fcc.gov/speeches/kennard/spwek806.html>; see also Kennard Challenges Long Distance Companies To Prove They Reduced Rates, Communications Daily, Feb. 27, 1998, at 1-2 ("In [a] letter [] to carriers . . . [Chairman] Kennard . . . questioned why long distance companies have been adding charges to customer bills rather than making reductions. He said there's [a] 'growing body of evidence that suggests that the nation's largest long distance companies are raising rates when their costs of providing service are decreasing.'").

[58] Nacchio Questions "Flow-Through" of Access Charge Reductions, TR Daily, Mar. 13, 1998.

past that these customers are served below cost, but that does not explain why mid-volume callers are denied discounts. See id. ¶¶ 23-27.

C. Market Evidence Confirms that BellSouth's Entry into the InterLATA Market in Louisiana Will Benefit Consumers

BellSouth's entry into the interLATA services market in Louisiana will provide the needed competition and benefit consumers of long distance services through lower prices and/or higher quality service. Moreover, by chipping away at costly barriers between local and long distance services, BellSouth's entry will bring further benefits. The United States is the only nation in the world that rigidly divides local from long distance telephone service and thereby deprives consumers the benefits of both vertical integration and additional competitors in long distance. Hausman Aff. ¶¶ 25-27; see also Gilbert Aff. ¶ 44 (App. A, Tab 8). Despite hypothetical possibilities of anticompetitive conduct, every other country that has permitted competition in long distance has decided that the benefits of allowing incumbent LECs to participate outweighs possible anticompetitive concerns. Hausman Aff. ¶ 25. The record of incumbent LECs' competitively beneficial provision of long distance and other vertically related services makes clear that the unanimous conclusion of all these other nations is correct.

1. Evidence of Competition Where LECs Have Been Allowed to Offer Long Distance.

Uniform historical experience confirms the potential benefits of in-region interLATA entry by BellSouth. As the Commission itself has recognized, the "recent successes of [SNET] and GTE in attracting customers for their long distance services illustrates the ability of local carriers to garner a significant share of the long distance market rapidly," "recent studies" based upon these positive market experiences "have predicted that AT&T's share of the long distance market may fall to 30 percent with BOC entry;" and such "additional competition in the long distance market is precisely what the 1996 Act contemplates and is welcomed." Michigan Order, 12 FCC Rcd at 20551-52, ¶ 15.

One of the best examples of this healthy competition is found in Connecticut. Long distance customers in Connecticut have benefited from SNET's price competition since it entered the interstate market in 1994.[59] SNET has competed effectively by offering one-second billing and rates approximately 17 percent below AT&T's — a scenario that augurs well for consumers when BellSouth enters the interLATA market in Louisiana. Hausman Aff. ¶¶ 16-18; see Schmalensee Aff. ¶ 52.[60] These savings have especially benefited low-volume callers who, prior to SNET's entrance, had disproportionately stayed with AT&T because they were ignored by other carriers. See Schmalensee Aff. ¶¶ 38-40. SNET has shown both a willingness and an ability to vie for this segment of the market, attracting a much higher share of interstate customers than interstate revenues. Id. ¶ 62.

[59] Consumers of intrastate services also have benefited, as AT&T responded to SNET's long distance offerings with competitive intrastate offerings. See Gilbert Aff. ¶¶ 37-38; Schmalensee Aff. ¶ 50.

[60] While DOJ's (and AT&T's) Professor Schwartz has admitted that "some SNET . . . customers may well be enjoying better rates as a result of [SNET's] interLATA entry," he has nevertheless contended that predictions of price reductions based on the SNET record are "exaggerated," Schwartz Supp. Aff. ¶¶ 81 n.33, 84 (DOJ South Carolina Evaluation Ex. 2). He claims that these predictions fail adequately to account for discount rates already available from interexchange carriers. Id. ¶ 81 n.33. However, Professor Schwartz overstates the impact of the incumbent interexchange carriers' discount rates. First, these discount plans are not used as widely as Professor Schwartz suggests. In Louisiana, approximately 67 percent of AT&T's customers face interstate basic rates. Schmalensee Aff. ¶ 12. Second, as noted above, discount plans are not "discounts" at all for many customers. See id. Aff. ¶¶ 21-22. Third, Professor Schwartz's analysis is highly selective. For instance, he never adequately accounts for the benefits of intraLATA toll dialing parity that will accompany the approval of BellSouth's section 271 application. See 47 U.S.C. § 271(e)(2). Jerry Hausman identified other "rather fundamental" errors by Professor Schwartz. Hausman Aff. ¶¶ 63-71; see also id. ¶¶ 60-61.

To compete with SNET, AT&T petitioned the Commission for authority to reduce its long distance rates specifically for Connecticut.[61] AT&T's stated reason for the petition was "the rapidly emerging competition from SNET in Connecticut."[62] AT&T thus effectively admitted that it faces more intense competition in Connecticut than elsewhere because the incumbent LEC has been allowed to enter the long distance market.[63]

The two geographic corridors running from New York City and Philadelphia to New Jersey offer another example in which incumbent LECs — in this case Bell Atlantic and NYNEX — have competed in in-region, interLATA services by setting prices below those of the major carriers. AT&T concedes that Bell Atlantic's corridor rates are as much as one-third lower than AT&T's,[64] and credits Bell Atlantic's widespread marketing of "sav[ings] over AT&T's basic rates" for Bell Atlantic's 20 percent market share of interstate corridor calls.[65] See Taylor Direct Testimony at 18 (App. C, Tab 23). AT&T and MCI sought permission to reduce their rates in these corridors precisely because they face more intense competition there than

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[61] See AT&T Comments, Market Definition, Separations, Rate Averaging and Rate Integration, at 29, Policy and Rules Concerning the Interstate, Interexchange Marketplace and Implementation of Section 254(g), CC Docket No. 96-61 (FCC filed Apr. 19, 1996) ("AT&T Rate Averaging Comments") (App. D, Tab 6); AT&T Corp.'s Petition for Reconsideration at 2-5, Policy and Rules Concerning the Interstate, Interexchange Marketplace and Implementation of § 254(g), CC Docket No. 96-61 (FCC filed Sept. 16, 1996) ("AT&T Petition for Reconsideration") (App. D, Tab 7).

[62] AT&T Petition for Reconsideration at 2.

[63] See id. at 2-5; AT&T Rate Averaging Comments at 29.

[64] AT&T Corp.'s Petition for Waiver and Request for Expedited Consideration, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26, Attach. A (FCC filed Oct. 23, 1996) ("AT&T Waiver Petition") (App. D, Tab 8).

[65] Id. at 3.